refuse a license and does not lay down the conditions by which he shall be governed. It would seem, therefore, very clearly unconstitutional, as denying the equal protection of the laws, and therefore conflicting with the Fourteenth Amendment, or as being a delegation of legislative power. *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Walsh* v. *City of Denver,* 11 Colo. App. 523; *Smith* v. *Hosford,* 106 Kan. 363; *City of Richmond* v. *House,* 177 Ky. 814; *Commonwealth* v. *Maletsky,* 203 Mass. 241; FREUND, POLICE POWER, 667-670. In *Matter of Frazee,* 63 Mich. 396, the court held an unregulated discretion in the mayor, to permit or prohibit parades on the streets, invalid. But, as the plaintiff asks relief under the ordinance, he cannot question its validity in this action. The cases are all but unanimous on this point. Mandamus cases in which the relator is permitted to raise the question of constitutionality are those wherein he attacks another statute which, if valid, would excuse the respondent from performance. *Von Hoffman* v. *Quincy,* 4 Wall. 535; *Giddings* v. *Secretary of State,* 93 Mich. 1. Hence, if plaintiff wishes to test the validity of the ordinance, he should go ahead with his business and get himself arrested and fined! The method is harsh, wasteful of time and money, and unfair to the party, but the law now offers him nothing better. *Flick* v. *City of Broken Bow,* 67 Neb. 529. The Michigan Declaratory Judgment Law, Act No. 150, P. A. 1919, might have given plaintiff an adequate and efficient remedy, *Dyson* v. *Atty. Gen.,* [1911], 1 K. B. 410, but it has been declared unconstitutional. *Anway* v. *Grand Rapids Ry. Co.,* 211 Mich. 592. See 16 MICH. L. REV. 69; 17 MICH. L. REV. 688. 19 MICH. L. REV. 86. 19 MICH. L. REV. 537 discusses a similar statute now in effect in Kansas. However, even though plaintiff in the instant case could not insist that the constitutional question be considered, the court *may* indulge in such consideration when the invalidity is clear, although neither party can, or does, insist thereon. *Welch* v. *Swasey,* 193 Mass. 364; *State* v. *Robins,* 71 Ohio St. 273. And if, as the court insisted, this be prevented by the rule that if a cause can be decided without passing on the constitutional question, such question will not be considered, there is another well-known rule applicable to the case, namely, that when one interpretation of a statute will make it unconstitutional, whereas another will make it valid, the court will give the latter if it can do so without straining the words and evident intent of the legislature. Upon this ground the dissenting justices contended that the ordinance should be construed as giving the mayor no discretion in the matter.

NEGLIGENCE—DUTY TOWARD INFANT TRESPASSERS—ATTRACTIVE NUISANCES.—Defendant caused certain excavations to be made on his premises. Plaintiff's child, playing with others around the excavation, was killed when the walls caved. In an action for damages it was alleged that the excavation was eight feet deep in sandy soil; that defendant knew that because of the nature of the soil a cave-in might occur at any time; that he knew the premises to be attractive to playing children; that he knew that children played there, and yet he took no precautions to guard them from danger or to warn them. Defendant demurred. *Held,* demurrer should be overruled. *Baxter* v. *Park,* (S. D., 1921), 184 N. W. 198.

It is a time-honored doctrine that a property owner owes no duty to trespassers other than to avoid wilfully injuring them. He is under no obligation to keep his premises safe for them. But many courts recognize as an exception to this doctrine that one who maintains dangerous instrumentalities on his premises, with the knowledge that they are likely to attract children at play and that the danger will be latent to their childish intellects, owes them the duty of guarding or at least of warning them of the danger. The English case, *Lynch* v. *Nurdin,* (1841), 1 Q. B. 29, was the pioneer case pronouncing this exception. In 1873 the U. S. Supreme Court followed by applying the new doctrine to a case of injuries caused by a railroad turntable, allowing the infant plaintiff to recover, even though he was a trespasser. *Railroad* v. *Stout,* 17 Wall. 657. Since then hundreds of cases have raised the question. Many courts have sanctioned the doctrine, others have disapproved it, and others have subjected it to a storm of criticism. An exhaustive analysis of the subject and a citation of cases appears in 19 L. R. A. (N. S.) 1094, and the problem is discussed in 18 MICH. L. REV. 340, and 5 MICH. L. REV. 64. Specific cases have been noted as they were decided in numerous other issues of this REVIEW. The modern tendency, however, seems to be to restrict the application of the doctrine. Some courts refuse to apply it in any case. *Reid* v. *Harmon,* 161 Mich. 51. Some limit it strictly to the turntable cases. *Railway* v. *Beavers,* 113 Ga. 398. Others limit it to cases involving attractive and dangerous machinery or explosives. *Erickson* v. *Great Northern R. R.,* 82 Minn. 60. It is generally said that the danger must be latent to the child, although patent to the property owner, to impose the duty on the latter, and some courts limit the doctrine by imputing to the child a marvelous perspicacity in discerning danger. But some few courts, such as the court in the principal case, adopt the doctrine whole-heartedly and compel all property owners to exercise ordinary care to guard infant trespassers. In view of the increasing number of attractive artificial perils which have been devised by twentieth century ingenuity, the doctrine is surely a salutary one, and since the principal case is apparently the first case in which the South Dakota court has followed the doctrine of *Lynch* v. *Nurdin,* it is to be commended for coming into the column of courts which place modern social considerations above technical property rights.

OIL AND GAS—NATURE OF INTEREST HELD BY LESSEE.—In determining the amount of tax due under a statute, it became necessary to decide whether an oil and gas lease which "granted, demised, leased, and let land for the sole purpose of operating for oil and gas" gave the lessee corporeal property. The Secretary of State excluded such oil leaseholds on the ground that they were incorporeal property. In an action in the form of an injunction against the Secretary of State to restrain him from turning over to the treasurer taxes paid under protest, it was *held,* that such a lease conveys a freehold interest in the realty and is corporeal property. *Transcontinental Oil Co.* v. *Emmerson, Secretary of State,* (Ill., 1921), 131 N. E. 645.

Courts of the various states are in conflict in their holdings as to the nature of the interest created by an oil and gas lease. First, it should be